Pellegrino, Rachel

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:30 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

Follow Up Flag: No Response Necessary
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From: Tammy Katz [(b)(6)]
Sent: Thursday, November 04, 2010 12:56 PM
To: TMFeedback
Subject: Small Business Study

Per your request, this responds to your request for feedback on trademark litigation tactics.

Overall, trademark bullying wastes USPTO's time and is an effective weapon against honest, small businesses – like mine.

1. I am the trademark owner (amid opposition) of one mark, Katz Marketing Solutions. Given my experience in corporate brand management and as an Adjunct Professor of Brand Management, I have had many other experiences working with brands and trademarks.

2 and 3. I received a cease-and-desist letter, asking to cease mark usage and turn over my domain name, by Katz Communications (div. of Clear Channel Inc.) in January of 2009. The letter came at almost the exact time that they "launched" a new subdivision, using my company's name, after they realized that I owned the domain that they had explored using. In my 9+ years in business (internationally), there have been no instances of confusion and they know that. So I am approaching 2 years defending myself from this bullying.

When they discovered that there are many other small marketing consulting businesses using the name Katz during my Discovery period, they sent similar bullying cease and desist letters to six other small marketing firms in July, 2010. I believe that at least one of these firms ceased using its mark.

5. I am amid the trademark opposition process with USPTO (TTAB #91191178). I have spent about $30,000 and countless hours defending myself so far; I am a very small (LLC) company.

6. Absolutely. In my case, the bully knew the mark and domain were not available. Right at the time they became aware of this (and had the ability to choose a different name or domain) they intentionally chose to try to financially steamroll over me and six similar companies – assuming they would prevail only because they had more financial resources to fight. Huge corporations intentionally trying to smother small businesses, with no/marginal legal merit is just WRONG, seems downright "un-American," and should be prevented.

My only sibling, also a former corporate businessperson turned entrepreneur, received a ceast-and-desist letter from a multi-billion dollar corporation within the last year. 2 of 2 siblings would appear pervasive.

7. Yes. It is an excellent place for a large corporation to quash small companies, solely because it's too expensive and time-burdensome to fight. Corporations absolutely should police and protect their valuable trademark assets and legitimate infringement. However, these numerous, and seemingly increasing rate of,

trademark bullying should be outlawed, or perhaps have financial sanctions? In my case, $XX,XXX was spent to protect myself from a bully, which is not recoverable, at least within the TTAB process

8. Yes. It's a waste of your time and money, as well as the victims'. I would suggest:
   1) A clear, preventive anti-bullying Act (perhaps like the Frisch's factors). If bullies are guilty, their case will be thrown out and fines/damages would be awarded.
   2) Additional scrutiny (and perhaps escalating fines) for repeat offenders.
   3) Consider a high visibility/landmark case to send a message (e.g. the Kellogg case 91196938) that you have a 'zero tolerance for bullying' AND 'zero tolerance for bullies abusing the USPTO's time and effort for these malicious acts.'
   4) Consider financial sanctions against large companies that are large/impactful enough to 'hurt' and 'gain their attention,' thus putting them on more even footing with the small companies they are abusing (i.e. perhaps in terms of % of a share point that they tried to unfairly protect).

9. Absolutely. My answers are similar to those outlined in #8. In addition, they could consider:
1) sanctions to prevent such anti-competitive activity in the future
2) awarding all attorney's fees (victim and bullies') to the victim (perhaps even a multiple). The rationale, is that both the corporations and the corporations' attorneys now have a financial incentive to keep bullying.
3) potential class action options, for victims to know that each other exist and unite.

10. Perhaps the FTC (as it seems a restraint of trade), state departments of Development, the SBA and other agencies involved in fair trade and supporting small businesses. (I'm not a lawyer). What other U.S. agencies may have a responsibility to do something about the problem?

11. Yes. Sponsor a bill and get it enacted.

Thank you in advance for considering my comments. I suspect my situation is similar to countless others, who do – or do not – have the financial, time, or emotional means to fight back and protect themselves.

Please let me know if I can provide further input or be of help. I would be all too happy to be part of the solution, rather than just 'complain.'

Sincerely,

Tammy G. Katz

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